

REMARKS/ARGUMENTS

Claims 1-28, 30 and 32 are pending to the present application. Claims 29 and 31 were previously cancelled, claims 1, 9, 10, 18, 19, 27, 28, 30 and 32 have been amended. No new claims have been added. Accordingly, claims 1-28, 30 and 32 are currently under consideration. Amendment and/or cancellation of certain claims is not to be construed as dedication to the public of any of the subject matter of the previously presented.

Further, while Applicants respectfully disagree with the grounds for rejection raised by the Examiner, in an effort to advance allowance, Applicants have amended the above referenced claims to overcome the Examiner's rejection. Applicants reserve the right to pursue any cancelled claim and any amended claim in its original form in a continuation application.

Claim Rejection Under 35 U.S.C. § 112

Claim 32 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regards as the invention. Claim 32 recites the limitation "the boundary" in line 2. The Office Action states there is insufficient antecedent basis for this limitation in the claim.

In response, Claim 32 has been amended to provide proper antecedent basis for the limitation in the claim. As a result, Applicants assert claim 32 is in condition for allowance and respectfully request such.

Claim Rejection Under 35 U.S.C. § 103

To establish a prima facie case of obviousness, three basic criteria must be met. See MPEP §§ 706.02(j), 2143-2143.03; *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The

teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *Id.*

Claims 1-8, 10-17, 19-26, 28, 30, and 32 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Novik* [U.S. Patent No. 6,339,745] in view of *Bromley et al* [US Pub No. US 2004/0167689 A1] in further view of *Moore* [U.S. Patent No. 6,377,210 B1]. Claims 9, 18, and 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Novik* in view of *Bromley* and in further view of *Moore* as applied to the claims above and further in view of *Kittredge et al* [US 7,103,627 B2]. Finally, claim 32 as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over *Novik* in view of *Bromley*, in further view of *Moore* as applied to claim 1 above, and further in view of *Hamrick et al* [US 6,356,841 B1]. Applicants respectfully traverse these rejections.

Independent Claims 1, 10, 19, 28, and 30

With respect to independent claims 1, 10, 19, 28, and 30, Page 3 of the Final Office Action concedes that *Novik* does not specifically disclose that a web browser is used in the method. It is asserted that *Bromley* cures this deficiency. The Office Action further states that neither *Novik* nor *Bromley* disclose a step of determining whether one of the tracked objects includes a status of in range of a service provider. However it is asserted that *Moore* cures this deficiency. While Applicants respectfully disagree, in an effort to advance allowance, Applicants have amended independent claims 1, 10, 19, 28, and 30 to recite, "**whereby the telemetry device can organize at least one queue for prioritizing the at least one message**". It is respectfully asserted that neither *Novik*, *Bromley*, nor *Moore* teach the disclosed recitation. Accordingly, Applicants request the allowance of claims 1, 10, 19, 28, and 30.

Dependent Claims 2-8, 11-17, 20-26, and 32

Claims 2-8 and 32 depend from claim 1. Claims 11-17 depend from claim 10. Claims 20-26 depend from claim 19. For at least the reasons provided earlier with respect to claim 1, 10, and 19 Applicants submit that *Novik* and *Bromley* in view of *Moore* do not disclose or suggest, inter

alia, the following element set forth in independent claims 1, 10, 19 and 28: **“whereby the telemetry device can organize at least one queue for prioritizing the at least one message”**.

Thus, Applicants request allowance of claims 2-8, 11-17, 20-26, and 32.

Independent Claims 9, 18, and 27

With respect to independent claims 9, 18, and 27, page 10 of the Final Office Action, states that *Novik* does not specifically disclose that a web browser is used in the method. The Office Action further concedes that neither *Novik* nor *Bromley* teach the use of servlets for processing.

In Applicants Response to Office Action dated November 20, 2006, Applicants respectfully asserted that the Examiner provided no explanation for its reliance on Official Notice for “the use of servlets.” The Applicants respectfully pointed out that the Administrative Procedure Act required the Patent Office to articulate and place on the record the “common knowledge” used to negate patentability (citations omitted). Applicants asserted that a prima facie showing of obviousness was not established.

In response to the Applicants’ communication of November 20, 2006, the Examiner cites Kittredge [U.S. Pat. No. 7,103,627 B2] in an attempt to overcome the noted deficiencies. However, it is respectfully asserted that the cited prior art references lack any motivation to combine. It is a bedrock principle of patent law that rejecting patents solely by finding prior art corollaries for claimed elements would permit the examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be an “illogical and inappropriate process by which to determine patentability” (*In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998)).

Further, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination (*In re Mills*, 916 F.2d 680 (Fed. Cir. 1990). The requisite motivating suggestion must be explicit (*Winner International Royalty Corp. v. Wang*, 48 USPQ 2d 1139 (D.C. 1998), “[t]here must have been some explicit teaching or suggestion in the art to motivate one of even ordinary skill to combine such elements so as to create the same invention”). The Examiner must identify where the

prior art provides a motivating suggestion for the combination (*In re Jones*, 958 F.2d 347 (Fed. Cir. 1992)). The Examiner does not do so.

Nevertheless, in an effort to advance allowance, the Applicants have amended independent claims 9, 18, and 27 to recite, **“whereby the telemetry device can organize at least one queue for prioritizing the at least one message”**. It is respectfully asserted that neither *Novik*, *Bromley*, *Moore*, nor *Kittredge* teach the disclosed recitation. The Applicants respectfully requests the allowance of claims 9, 18, and 27.

CONCLUSION


As previously stated, Applicants respectfully disagree with the grounds for rejection but in an effort to advance allowance, have amended the above referenced claims to overcome the Examiner's rejection. Applicants reserve the right to pursue any cancelled claim and any amended claim in its original form in a continuation application.

Accordingly, on the basis of the above amendments and remarks, reconsideration and allowance of all the pending claims is believed to be warranted, and such action is respectfully requested. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 50-1847 referencing docket no. 270480340050602. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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